



United States Government

**NATIONAL LABOR RELATIONS BOARD**

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April 7, 2005

James G. Brown, Esq.  
Ford & Harrison LLP  
300 S. Orange Avenue, Suite 1300  
Orlando, FL 32801

Re: The New Piper Aircraft, Inc.  
Case 12-RM-396

Dear Mr. Brown:

On March 15, 2005, the Acting Regional Director issued a letter dismissing the above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act. On March 29, 2005, this office received a copy of the request for review of that determination which you filed with the National Labor Relations Board on behalf of The New Piper Aircraft, Inc. (the Employer-Petitioner). In view of your assertion in the request for review that the Region improperly failed to discuss in the dismissal letter why the evidence submitted by the Employer-Petitioner was deemed insufficient to support the petition, the undersigned has decided to treat your request for review as a request for reconsideration, and has further carefully considered this matter.

As noted in the letter of March 15, 2005, the investigation disclosed that in Case 12-RC-8982, on December 17, 2003, International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) was certified as exclusive collective-bargaining representative of a unit of certain employees of the Employer-Petitioner employed at its facilities at Vero Beach, Florida. On March 2, 2005, the Employer-Petitioner filed the instant petition, seeking an election to determine whether the Union still represents a majority of the unit employees. The Employer-Petitioner contends that a good faith reasonable uncertainty exists as to whether the Union continues to represent a majority of the bargaining unit employees and submitted certain evidence in support of that position.

**Denial of Request for Reconsideration:** Based on an administrative investigation, having viewed all of the evidence submitted in support of the petition in the light most favorable to the Employer-Petitioner, and after having given the Employer-Petitioner a full opportunity to supplement its initial submission of evidence in support of the petition, the Region determined that the Employer-Petitioner failed to submit sufficient evidence to show that a good faith reasonable uncertainty exists as to whether

the Union continues to represent a majority of the bargaining unit employees.<sup>1</sup> There are 610 unit employees, according to the petition filed by the Employer-Petitioner. More specifically, using the Employer-Petitioner's own summary figures cited in its request for review, 103 of 610, or 16.88 percent of the unit employees, arguably expressed opposition to continued representation by the Union.<sup>2</sup> Further, counting the 39 employees on the second shift of the fabrication department as having expressed opposition to representation by the Union based on the assertion of supervisor/Team Leader Joe Ward that he "believes" they do not want representation by the Union (despite the lack of objective evidence of the basis for that belief), 142 of 610, or 23.27 percent of the unit employees, arguably expressed opposition to the Union.<sup>3</sup>

As the Employer-Petitioner notes, in dismissing the petition on March 15, 2005, the Region relied on the following authorities: Allentown Mack Sales & Service v. NLRB, 522 U.S. 359 (1988); Levitz Furniture of the Pacific, 333 NLRB 717 (2001); GC 02-01, Guideline Memorandum Concerning Levitz; NLRB Casehandling Manual Sec. 11042 to 11042.8. In addition, I note that after Levitz, the Board decided that the mere filing of a decertification petition (requiring a showing of interest of 30 percent) is insufficient evidence to support an RM petition. Hospital Metropolitano, 334 NLRB 555, 556, fn. 13 and accompanying text, (2001), citing Dresser Industries, 264 NLRB 1088 (1982). The Board also stated in Heritage Container, Inc., 334 NLRB 455 (2001), that the receipt of an antiunion petition signed by 24 of 69 unit employees (34.7 percent) alone would have been insufficient to establish good faith reasonable uncertainty under Levitz, even if the

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<sup>1</sup>The determination as to the adequacy of evidence supporting the filing of an RM petition, like determinations as to the adequacy of a showing of interest submitted in support of a representation petition filed by a labor organization or an employee, is an administrative matter and normally remains confidential. O.D. Jennings & Company, 68 NLRB 516 (1946). However, in its request for review filed with the Board, the Employer-Petitioner made certain statements concerning the evidence it submitted in support of the petition, and also enclosed copies of the documents it submitted to the Regional office which contain evidence in support of the petition, and a summary of that evidence. In view of the Employer-Petitioner's decision to reveal this information and evidence to all parties, and in light of the Employer-Petitioner's above-noted assertion regarding the Region's failure to discuss in the dismissal letter why the Employer-Petitioner's evidence is insufficient, I feel it is appropriate to discuss it herein.

<sup>2</sup> In using these figures, I have given the Employer the full benefit of the doubt as to the quality of evidence of anti-union sentiment. Thus, I have accepted all asserted expressions of anti-union sentiment as indicating opposition to continued representation by the Union, even though many of these asserted expressions are vague and may have other meanings. For example, individuals who said they want to "get out of" the Union may have been expressing a desire to resign from union membership, rather than stating their opposition to continued representation by the Union.

<sup>3</sup> I note that Ward, who is referred to as a supervisor in the request for review and as a Team Leader in his affidavit, merely stated his "belief" that 39 of the 40 employees he supervises (on the second shift in the fabrication department) do not want the Union and specified that he was personally aware of the anti-union sentiments of three named employees. A supervisor's mere speculative "belief" as to the anti-union sentiments of employees, without more, is meaningless. The basis for Ward's belief is not clear from his affidavit which is part of Composite Exhibit 2 to the Employer-Petitioner's request for review. In counting these 39 employees, I also note that it is unclear from Ward's affidavit whether or not the three employees he named therein are among the 39, and that if they are, then only 36 should be added to the 103 named employees who arguably expressed opposition to the Union.

petition had not been tainted. The Employer-Petitioner's objective considerations in this case, viewed in the light most favorable to it, and including both anti-union sentiments of employees which were expressed by other employees, and the mere "belief" of a supervisor, falls far below even the 30 percent threshold of support needed for an employee to file a decertification petition, never mind the 50 percent threshold for showing that a union has actually lost majority status.

Although the Board has not established a precise percentage of unit employees whose sentiments against an incumbent union must be known to an employer in order to establish that the employer has a good faith reasonable uncertainty as to whether that union continues to enjoy majority status among bargaining unit employees, based on the above I find that the Employer-Petitioner has not established such a good faith reasonable uncertainty in this matter.<sup>4</sup> Accordingly, I am denying the Employer-Petitioner's request for reconsideration of the dismissal in this matter.

Pursuant to the National Labor Relations Board's Rules and Regulations, any party may obtain a review of this action by filing a request therefor with the National Labor Relations Board, Washington, D.C. 20570. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. The request for review (eight copies) must be received by the Executive Secretary of the Board by the close of business on April 21, 2005. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. A request for extension of time should be submitted to the Executive Secretary in Washington, and a copy of any such request for extension of time should be submitted to this Office and to each of the other parties to this proceeding.

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<sup>4</sup> The facts in Allentown Mack, supra, relied on by the Employer-Petitioner, are distinguishable from those in the instant case. In Allentown Mack the Supreme Court found that the following evidence established that the employer had a "good faith reasonable doubt" as to the union's continued majority status, which justified the employer's conduct of a poll of its employees as to whether or not they wanted union representation: 7 of the 32 employees in the unit directly made statements to management which arguably expressed their own opposition to the Union; a shop steward for the service department (Mohr) who represented all but the 7 parts department employees in the unit told a manager that he felt the employees did not want a union and if there was a vote the Union would lose; and a night shift employee (Bloch) told a manager that the entire night shift (5 or 6 employees) did not want the union. Thus, the employer in Allentown Mack had some indication that a majority of the unit employees did not want to be represented by the union. In the instant case, the Employer-Petitioner has some indication, from at most, 23.27 percent of the unit employees, that they do not want to be represented by the Union.

The request for review and any request for extension of time must include a statement that a copy has been served on this Office and on each of the other parties to this proceeding in the same or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

Rochelle Kentov  
Regional Director

cc: Executive Secretary  
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